

**OFFICE OF THE GENERAL COUNSEL**

**MEMORANDUM GC 95-5**

**April 19, 1995**

**TO:** All Employees, Office of the General Counsel

**FROM:** Fred Feinstein, General Counsel

**SUBJECT:** Summary of Operations (Fiscal Year 1994)

Attached is a copy of the Summary of Operations for Fiscal Year 1994. As reflected in the summary, the staffs of the Office of the General Counsel deserve a great deal of praise for their outstanding record of performance.

I wish to extend to you my sincere appreciation and congratulations for the excellent manner in which you continue to carry out the mission of the Agency year after year.

Fred Feinstein

Attachment

cc: NLRBU

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MEMORANDUM GC 95-5

## SUMMARY OF OPERATIONS FISCAL YEAR 1994

### INTRODUCTION

This summary is a continuation of the General Counsel's practice of providing an annual overview of the operations of the Office of the General Counsel.

As the summary reflects, the record of performance achieved by the staffs of the Headquarters and Regional Offices of the General Counsel in Fiscal Year 1994 continued to be outstanding. This accomplishment is truly extraordinary because it was accomplished in the face of continued budgetary restraints upon our staff and resources.

I wish to extend my sincere appreciation to all staff members for their continued hard work and dedication to public service and for the cooperative manner in which you have responded to our new priorities in casehandling. I would also like to thank those who practice before us for the cooperation and assistance that they have extended to us in our latest efforts to effectively and efficiently administer the Act.

Fred Feinstein  
General Counsel

## ORGANIZATION OF THE OFFICE OF THE GENERAL COUNSEL

The Office of the General Counsel is composed of five major components or Divisions. These Divisions are responsible for the various casehandling, administrative and personnel functions of the office. The five Divisions are: the Division of Operations-Management and Regional Offices, the Division of Advice, the Division of Enforcement Litigation, the Division of Administration and the Office of Equal Employment Opportunity.

The Division of Operations-Management includes Headquarters and Regional Office staffs. The Headquarters staff has responsibility on behalf of the General Counsel for the operations of the Regional, Subregional and Resident Offices, and the coordination of the casehandling of those offices with the Washington Divisions of the Office of the General Counsel and the Board.

There are 33 Regional Offices, 2 Subregional Offices and 17 Resident Offices. Each Regional Office is headed by a Regional Director who is responsible for the management of the office and any attached Subregional or Resident Offices and for the investigation and initial determination of the merits of unfair labor practice cases and representation cases. The Regional Director is also responsible for processing requests for information under the Freedom of Information Act.

The Division of Advice has the function of rendering substantive legal advice to the General Counsel and to Regional Offices in cases which involve novel or complex issues, cases of national interest or cases which involve developing and changing areas of the law. The Division also processes requests for injunctive relief under Section 10(j) of the Act, litigates injunction cases in Federal appellate courts under Section 10(l) and 10(j) and indexes and classifies Board and Court decisions under the Act.

The Division of Enforcement Litigation is responsible for the Agency's litigation in the United States Court of Appeals, the Supreme Court of the United States and for contempt and miscellaneous litigation in Federal and State courts to protect the Agency's processes and functions. The Office of Appeals is a major component of the Division of Enforcement Litigation. This office reviews appeals from Regional Directors' refusals to issue complaint in unfair labor practice cases and recommends proposed action to be taken thereon by the General Counsel. It also processes appeals from the Regional Directors' denials of FOIA requests.

The Division of Administration is under the general supervision of the General Counsel and has been delegated responsibility for the development, direction and coordination of administrative staff support functions for both the Board and the General Counsel.

The Office of Equal Employment Opportunity is under the direction of the Board and the General Counsel and is responsible for the development, monitoring and evaluation of the Agency's affirmative action program and the processing of internal complaints of discrimination.

### General Information

The information set forth below reflects the work of the various Divisions during the past fiscal year (FY 94). These statistics are preliminary and based on actions taken during the year.

### Regional Offices

#### Case Intake

The NLRB has no authority to initiate proceedings on its own. Its processes can be invoked only by the filing of a charge or a representation petition by a member of the public. Total case intake during FY 94 was 40,861 compared to 40,322 cases in the previous year, representing a 1.3 percent increase in intake. Unfair labor practice case intake at 34,782 increased by 3.1 percent while representation case intake at 5,634 decreased 8.2 percent. In other types of cases filed (UD, AC and UC), there was an increase from the previous year's intake with the filing of 445 such cases compared to 438 cases.

#### Regional Professional Staff and Productivity

The average professional staff to handle the workload in the Regional Offices during FY 94 was 930 compared to 937 in FY 93. In the area of productivity [the measure of average monthly output per Regional professional during the year], FY 94 output per field professional per month increased by 8.3 percent to 149.2 units as compared to 137.8 units for FY 93. The productivity figure is affected by a number of factors including case intake, average professional staff, attrition and the settlement rate.

### Information Officer Inquiries

The General Counsel's Public Information Program continued to successfully prevent a large number of nonmeritorious cases from being filed with the Agency and continued to provide assistance to members of the public by referring them to the appropriate agencies or organizations or by assisting them in filing charges with the NLRB, where appropriate. In FY 94, the total number of inquiries received through the Public Information Program was 213,715, an increase of 0.3 percent over the 213,079 inquiries received during FY 93. The rate of charge acceptance (percent of instances in which the contact results in a charge being filed) was 5.2 percent, as compared to 5.3 percent in FY 93. Since the inception of this program several years ago, the Agency has reduced its charge acceptance rate by 4 percent from 9.2 percent in 1980 to the current 5.2 percent rate. In terms of cases, this program in this year alone saved the Agency the cost and time of investigating approximately 9,000 no-merit cases.

### Unfair Labor Practice Cases

#### Settlements

The Agency's effectiveness and efficiency in administering the Act is greatly enhanced by its ability to effect a voluntary resolution of meritorious unfair labor practice cases. Over the years, the Agency has had an excellent record in achieving this end. In FY 94, 9,423 settlements of unfair labor practice cases were obtained representing a rate of 92.2 percent as compared to 9,362 settlements in FY 93 and a rate of 92.1 percent.

#### Complaints

In FY 94, 2,979 complaints issued as compared to 3,056 in FY 93. The median time to issue complaints was 53 days, as compared to the median time of 46 days achieved in FY 93.

#### Merit Factor

The percentage of unfair labor practice cases in which a Regional Director determines that formal proceedings are warranted is called the merit factor. In FY 94 that factor was 33.9 percent--approximately the same as last year's merit factor of 34.3 percent. In general, over the years, the merit factor has fluctuated between 31 percent and 36 percent.

### Litigation Results

The General Counsel won 86 percent of Board and Administrative Law Judge decisions in whole or in part in FY 94, the same litigation success rate attained in FY 93. The litigation success rate is a factor which permits an assessment of the quality of Regional investigations and litigation.

### Remedies

In FY 94, \$61,585,694 was distributed to employees as backpay, representing a 33.9 percent increase over FY 93 in which \$46,003,730 was distributed. The amount paid out to employees in FY 94 as reimbursement of fees, dues, and fines was \$1,517,228 and represents a 17.9 percent increase when compared to the \$1,287,336 disbursed in FY 93. In addition, in FY 94, 4,450 employees were offered reinstatement, as compared to 3,016 in FY 93 which represents an increase of 47.5 percent.

### Representation Cases

#### Elections

The Regions conducted 3,572 initial elections in FY 94 of which 83.4 percent were held pursuant to agreement of the parties, compared to 3,586 initial elections and an 85 percent election agreement rate for FY 93. The median time to proceed to an election from the filing of a petition was 48.7 days, a slight increase from the 48.5-day median in FY 93.

### Regional Director Decisions

In FY 94, Regional Directors issued 721 decisions in contested representation cases after hearing in a median of 45 days. This compares with FY 93, when 690 decisions were issued in a median time of 44 days.

### Representation and Union Deauthorization Hearings

In this category, 877 initial hearings were held in FY 94 as compared to 896 in FY 93. The number of hearings held each year has declined over the last several years since they have been directly affected by representation case intake.

## Appellate Court Activity

Intake and Productivity. In FY 94, the Appellate Court Branch was responsible for handling 218 cases, 125 of which were referred by the Regions for court enforcement and 93 cases in which petitions for review were filed by other parties. By filing briefs in 118 cases and securing compliance in another 109 cases, dispositions were made in 227 cases. In FY 93, total intake was 294 cases and dispositions totaled 273 cases. Oral arguments were presented in 122 cases in FY 94 compared with 149 cases in FY 93. The median time for filing applications for enforcement was 37 days in FY 94 compared with 33 days in FY 93. The median time for both enforcement and review cases, from the receipt of cases to the filing of briefs, was 153 days in FY 94 compared with 143 days for FY 93.

## Litigation Results

In FY 94, 142 cases were decided by the United States Courts of Appeals compared with 179 cases in FY 93. Of these cases, 78.9 percent were won in whole or in part in FY 94 compared with an 88.8 percent success rate in FY 93. In FY 94, 6.3 percent were remanded entirely compared with 5.6 percent in FY 93. Also in FY 94, 14.8 percent were total losses, up from the 5.6 percent in FY 93.

Special Litigation Activity. In FY 94, the Special Litigation Branch had an intake of 92 cases and closed 68 cases. This compares with an intake of 99 cases and the closing of 123 cases in FY 93. Additionally, in FY 94, the Branch filed 79 briefs: 22 appellate court briefs, 24 district court briefs and 33 bankruptcy court briefs. This compares to FY 93 when the Branch filed 96 briefs, 18 to the appellate courts, 42 to the district courts and 36 to the bankruptcy courts. In FY 94, the Branch also participated in 34 oral arguments and received 27 decisions as follows: 1 bankruptcy decision, a loss; 12 district court decisions, winning 11 and losing 1; 14 appellate court decisions, winning 12 and losing 2.

Supreme Court Activity. In FY 94, the Supreme Court decided two Board cases on the merits; the Board won one and lost one. The Board also participated as amicus in two cases. In FY 93, the Supreme Court decided no Board cases, but decided one in which the Board participated as amicus. In FY 94, the Court denied 13 private party petitions for certiorari and granted three; one Board

petition was granted. In FY 93, the Court denied 13 private party petitions for certiorari and granted one; no Board petitions were granted.

Contempt Activity. In FY 94, 122 cases were referred to the Contempt Litigation Branch for consideration for contempt or other appropriate action to achieve compliance with court decrees, compared to 154 cases in FY 93. Voluntary compliance was achieved in 15 cases during the fiscal year, without the necessity of filing a contempt petition, while in 32 others, it was determined that contempt was not warranted. During the same period, 21 civil contempt proceedings were instituted as compared to 23 civil proceedings in FY 93. These included three motions for the assessment of fines and writ of body attachment. In addition, one criminal contempt proceeding was initiated during the year. Sixteen civil contempt or equivalent adjudications were awarded in favor of the Board, including one where the court ordered civil arrest and assessment of fines. During the fiscal year, the Contempt Litigation Branch collected \$100,297 in fines and \$534,995 in backpay, while recouping \$8,700 in court costs and attorneys' fees incurred in contempt litigation.

Appeals Activity. In FY 94, the Office of Appeals received 3,698 appeals from Regional Directors' refusals to issue complaints, an increase of 39 from the 3,659 appeals received in FY 93. In FY 94, the office disposed of 3,532 appeals, a decrease of 112 from the 3,644 decided in FY 93. The percentage of reversals of Regional Directors' dismissals was 2.4 percent, an increase from the 1.6 percent reversed in FY 93. Median time to process appeals in FY 94 was 21 days, compared to 9 days in FY 93.

#### Division of Advice

During FY 94, the Division of Advice processed its cases in a median time of 25 days. Also, during the year the Division received 802 cases and closed 753 cases. The median age of cases pending at the end of the fiscal year was 28 days.

#### Section 10(j) Injunction Activity

In FY 94, the Injunction Litigation Branch received 207 cases, as compared to the 116 cases received in the prior year. Section 10(j) relief was authorized in 83 cases, or 40 percent of the cases. In addition, the success rate, i.e., in these

cases the Agency achieved either a satisfactory settlement or a substantial victory in litigation for authorized 10(j) cases, was 82 percent.



### Section 10(l) Activity

The Regional Offices filed 16 petitions for 10(l) injunctions with the appropriate district courts in FY 94, a 38.5 percent decrease from 26 petitions filed in FY 93.

### Injunction Litigation Branch

During FY 94, the Injunction Litigation Branch handled 80 cases in addition to the requests for Section 10(j) authorization. These cases involved appeals from district court decisions in 10(j) or 10(l) cases, contempt of district court decrees, and litigation advice to Regions in their litigation of 10(j) or 10(l) cases. The Branch directly handled 4 appeals that were pending at the beginning of the fiscal year and 7 appeals that were filed during the year. Of these 11 cases, the Branch won 2 court decisions and lost 1, satisfactorily resolved 2 others before decision and 6 were pending decision at the end of the fiscal year. The Branch also authorized the Regions to institute contempt proceedings in 4 cases during FY 94.

Date: April 1995